

18.05.2022
Court No.13
Item No.13
PK

WPA 7547 of 2022

**Anima Mukherjee and Ors.
Vs.
The State of West Bengal and Ors.**

Mr. Ajoy Krishna Chatterjee, Senior Advocate
Mr. Jayanta Mukherjee
Mr. Somnath Mukherjee
Mr. Sayan Mukherjee

... For the Petitioners.

Sk. Md. Galib,
Mr. Kapil Guha

... for the State.

Mr. Haradhan Banerjee,
Mr. Amitava Pain,
Mr. S. Datta

... for the private respondent no. 4.

The matter has been listed on a prayer for extension of interim order dated 27th April, 2022.

The private respondent no. 4 is represented today.

Mr. Chatterjee, learned senior advocate for the petitioners would make two fold submissions. Firstly, that the order of status quo in T. S. No. 140 of 2012 has been confirmed by the civil court on 16th March, 2019. The suit is since pending. It is, therefore, submitted that police ought to have acted on the communication of the order of the civil court to interfere and restrain the private respondents from violating the said order.

It is now well settled that the remedy for violation of an interlocutory order of a civil court lies

under the provision of Order 39 Rule 2A of the Code of Civil Procedure. The police are not expected to understand the scope of orders passed by the civil court. Further if violation of its order is asserted and brought to the notice of such civil court, specific orders could be passed, on the police by such Court. In the absence of any specific order of the civil court under Order 39 Rule 2A it would be grossly inappropriate on the part of the police to start interpreting or enforcing Court orders.

The next argument of Mr. Chatterjee is in respect of the order of injunction obtained by the private respondent no. 4 against the writ petitioners in respect of a property in Title Suit No. 422 of 2022 (Sabri Property Pvt. Ltd. Vs. Uttam Kumar Chatterjee). The petitioners are admittedly not a party to the said suit.

Mr. Chatterjee submits that the said order has been obtained by fraud and suppression of material facts and is therefore a nullity. It is also submitted that the said order is even otherwise not binding on his client since she is not a party to the suit.

Reliance is placed on the decision of the Supreme Court in the case of **A. V. Papayya Sastry and others Vs. Government of A. P. and others** reported in **AIR 2007 SC 1546** and the decision of **S.**

P. Chengalvaraya Naidu Vs. Jagannath and others
reported in **(1994) 1 SCC 1.**

This Court notes that injunction, if any, passed in T. S. No. 422 of 2022 has to be in the nature of interlocutory order. The petitioners, if aggrieved by the same, can take appropriate steps before the learned 3rd Civil Judge (Junior Division), Howrah in the pending suit. Any interlocutory order is subject to final orders in the proceeding. Nullity and unenforceability of an interlocutory order cannot ordinarily therefore be urged in a subsequent proceeding.

In view of the above, the writ petition is disposed of without any orders.

The petitioners may approach the civil court either in the pending suits or take steps in any suit instituted by the private respondent no. 4 in accordance with law.

Since no affidavits have been called from the respondents, the allegations made in the writ application shall not be deemed to have been admitted by them.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)